IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 8TH MAY 2007 / 18TH VAISAKHA 1929

Crl.MC.No. 1499 of 2007()

AGAINST THE ORDER DATED 03/05/2007 IN CRMP.1856/2007 IN SC.685/2004 of ADDL. SESSIONS COURT (ADHOC-II), THODUPUZHA

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PETITIONER: 1ST ACCUSED.

TOMICHAN @ ANTONY, S/O. JOHN,
MATTATHIL HOUSE, THOPRAMKUDY KARA,
VATHIKKUDY VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(CRIME NO.7 OF 2003 MURICKASSERRY POLICE STATION).

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.M.C.No. 1499/2007

Dated this 8th day of May, 2007

O R D E R

The petitioner, who is the first accused in S.C.No.685/2004 on the file of the Additional Sessions Court (Adhoc-II), Thodupuzha, seeks to quash the order dated 3.5.2007 in Crl.M.P.1856/2007 refusing to send Exts.P1 and D1 for comparison by a handwriting expert.

2. The aforesaid Sessions Case has arisen out of crime No.7/2003 of Murickasserry police station for offences punishable under Sections 326, 294(b) and 307 IPC read with Section 34 IPC. There was a counter case registered as crime No.8/2003 of the same police station allegedly at the instance of the petitioner. The trial of Sessions Case No.685/2004 was in progress. The head constable of the said police station and who allegedly registered the crime in his capacity as the Station House Officer, was examined as PW7. According to the petitioner, Ext.P1 is not the original F.I statement but a substituted F.I statement, the handwriting of which is not that of PW7. During the course of cross-examination of PW7, the head constable, admitted that the

handwriting in Ext.D1 which is the first information statement given by the petitioner herein in the counter case registered as crime No.8/2003, is that of his. He had also deposed that Ext.P1 the F.I statement in crime No.7/2003 is also in his handwriting. He was then asked whether there was any dissimilarity in the handwritings in Exts.P1 and D1 to which he answered that both handwritings are of the same person.

3. According to the petitioner, Ext.P1 is not in the handwriting of PW7. Thereupon the petitioner filed Crl.M.P.1856/2007 before the trial Court seeking to send Exts.P1 and D1 for comparison by a handwriting expert to prove his contention that both are not in the handwriting of the same person. That was rejected by Annexure-5 order dated 3.5.2007. It is the said order which is assailed in this Crl.M.C.

4. I am not inclined to dislocate the trial before the Sessions Court especially when the case is a relatively old case. It is very well open to the trial Judge to compare the handwritings in Exts.P1 and D1 in exercise of his power under Section 73 of the Evidence

Act and if on such comparison the Sessions Judge finds any difficulty in coming to a definite conclusion either way, I am sure that the trial Judge will consider the question of sending the documents to a handwriting expert notwithstanding the dismissal of Crl.M.P No.1856/2007.

With this observation, this Crl.M.C is disposed of.

V.RAMKUMAR,
JUDGE

mrcs